

Appl. No. : 10/090,471
Filed : March 4, 2002

REMARKS

Claims 1 through 17 and 24-29 are currently pending in this application. Claims 18-23 have been cancelled. Claims 1, 7-8, 10-12, and 16-17 have been amended. Claims 24-29 have been added. Reconsideration of the application in view of the following comments is respectfully requested.

Response to the Examiner's Comments

Claims 1, 7-8, 10, 16 and 22 have been amended to recite the chemical species in lower-case lettering. The chemical species were originally capitalized to signal that these terms have been defined in the specification. In order to expedite the processing of this application, applicants have amended the claims to comply with the Examiner's comment.

The phrase "by weight" has been added to claims 8, 17 and 23. These amendments are believed to be fully responsive to the Examiner's comments.

Response to the §102 Rejections

The §102(e) Rejections

The Examiner has rejected claims 1-5, 7, 9-14, 16, 18-20, and 22 under 35 U.S.C. §102(e) as being anticipated by Collette et al. (U.S. Patent No. 5,628,957, hereinafter "Collette"). The Examiner states, in part, that "Collette et al. teach a laminate (30, 32 and 34 from Fig. 2 and column, 5 lines 31-44) comprising at least a first layer of polyethylene terephthalate (32 and 34 from Fig. 2 and column 5, lines 31-44) directly adhered to a second layer of thermoplastic material (30 from Fig. 2 and column 5, lines 31-44) ... said polyethylene terephthalate in the first layer has an isophthalic acid content of at least about 2% by weight (since Collette et al. teach that the range is from 0-10% by weight and more specifically 5% by weight see column 5, line 51 through column 7, line 2, see also claim 14, column 12, lines 35-37)."

Independent claim 1 has been amended to clarify that the laminate consists of a first layer of polyethylene terephthalate directly adhered to a second layer of thermoplastic material. Collette does not disclose this combination; rather Collette discloses "exterior (inner and outer) PEN layers 32 and 34, and an interior (core) layer 30 of a second polymer" wherein the "second polymer is a substantially noncrystallizable high copolymer PET, known as PETG, or a blend of PETG and PEN." (column 5, lines 33-38). Accordingly, Collette discloses a three-layer laminate

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with inner and outer layers of a first material and an interior (core) layer of a second material. Accordingly, Collette does not disclose a laminate as claimed in Claim 1 and does not anticipate this claim. Accordingly, claim 1 and all claims depending therefrom, are patentable over Collette.

Independent claim 10 has been amended to clarify that the preform or container body portion as claimed consists of first and second layers. As previously discussed, Collette does not disclose a two layer combination as claimed. Therefore, Collette does not disclose a laminate in the form of a preform or container as claimed in Claim 10 and does not anticipate this claim. Accordingly, claim 10 and all claims depending therefrom, are patentable over Collette.

The §102(a) Rejection

The Examiner has rejected claims 1-5 under 35 U.S.C. §102(a) as being anticipated by Hiraoka et al. (WO 97/31050, translation of abstract). Responding to this rejection does not equal an admission that this reference is prior art, accordingly Applicant reserves the right to swear behind this reference at a later date if desired. As the PCT publication is in Japanese, applicant refers to the U.S. national phase filing, U.S. Patent No. 6,485,804B1 (hereinafter "Hiraoka"), of the PCT publication in order to achieve a better understanding of the disclosure of Hiraoka.

The Examiner states, in part, that "Hiraoka et al teach a laminate comprising at least a first layer of polyethylene terephthalate directly adhered to a second layer of thermoplastic material (since Hiraoka et al. teach PET bonded to polyamide in a bottle) ... and said polyethylene terephthalate in the first layer has an isophthalic acid content of at least about 2% by weight."

Applicant respectfully disagrees with this characterization of Hiraoka. Although Hiraoka discloses a polyester laminate, the laminate disclosed does not contain a layer of PET directly adhered to a layer of polyamide. Instead, the laminate disclosed comprises "[I] a first resin layer formed from the first polyester [A] or the polyester composition of the invention, and [II] a second resin layer formed from at least one resin selected from the group consisting of (a) the second polyester [B], (b) a polyamide and (c) a polyolefin." (column 3, lines 7-13). Hiraoka describes "the polyester composition of the invention" as comprising "1 to 99% by weight of the first polyester [A]." (column 2, lines 60-62).

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The “novel first polyester [A]” is not the commonly known PET, rather it is a polyester comprising “polyalkylene glycol having an alkylene chain of 2 to 10 carbon atoms” (column 3, lines 42-43). Although Hiraoka does describe PET in the background section as one of the materials commonly used for containers and bottles, this description is clearly background to be distinguished from the “novel first polyester [A].” Accordingly, the “first polyester [A]” and therefore “the polyester composition of the invention” do not disclose PET as that is known to one of skill in the art. Therefore, Hiraoka does not disclose a laminate as claimed in Claim 1 and does not anticipate this claim. Accordingly, claim 1 and all claims depending therefrom, are patentable.

Response to the §103 Rejections

The §103(a) Rejection of Independent Claims 10 and 18 over Collette et al in view of Hiraoka et al

The Examiner has rejected claims 7-9, 10-14, 16-17, 18-20, and 22-23 under 35 U.S.C. §103(a) as being unpatentable over Collette et al (U.S. Patent No. 5,628,957) in view of Hiraoka et al (WO 97/31050).

Collette, as noted above, does not disclose, teach, or suggest a laminate consisting of two layers. Additionally, Hiraoka, as described above, does not disclose the use of PET as that is known to one of skill in the art and in fact teaches away from such use. The background section of Hiraoka describes that PET is commonly used for containers and bottles, but that there is a need to shorten production time by increasing the crystallization rate of the polyester resins. Further, Hiraoka states that while some polyester resins have high crystallization rates, “the resulting bottles have a problem of decrease in transparency.” (column 2, lines 16-19). Accordingly, claim 10, and all claims depending therefrom, which require a first layer of PET having an isophthalic acid content of at least about 2% by weight are not obvious over Collette in view of Hiraoka.

New Claims

Applicant believes that new claim 24, and all claims depending therefrom, are also patentable over Collette and Hiraoka in that those references, alone or in combination, do not disclose or recite:

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(1) A container or preform comprising a neck portion and a body portion, wherein said body portion comprises:

a first layer of polyethylene terephthalate having an isophthalic acid content of at least about 2% by weight; and

a second layer directly bound to said first layer, said second layer comprising a thermoplastic material bound directly thereto ... wherein the first layer forms an interior surface of the preform or container; or

(2) A laminate comprising:

a first layer of polyethylene terephthalate having an isophthalic acid content of at least about 2% by weight; and

a second layer directly bound to said first layer, said second layer comprising a thermoplastic material

Conclusion

In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited. If, however, any questions remain, Examiner is cordially invited to contact the undersigned so that any such matters may be promptly resolved.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: Karoline A. Delaney
Karoline A. Delaney
Registration No. 44,058
Attorney of Record
Customer No. 20,995
(949) 760-0404